

EAST AFR. PROT.

No. 32274

C. O.
32274
Recd
REG SEP 35

(Subject.)

Mr. E. Tostle + German E. & Co's claims to land at Wata.

Considers the two claims sh^d. be kept distinct. Suggests for reasons stated Mr. Tost sh^d. be allowed to continue in possession or given a grant of the land as regards Co's claim that is unable justification for saying that the claim cannot be satisfied with unless all goods submitted on board of her. Enumerates points to which it is proposed to call the attention of the German Govt.

(Minutes.)

Mr. Antro...

I think the F.O. view is sound viz. that the claim of the German E. Africa Co. sh^d. be upheld by the Court of Admiralty and that the small claim of Mr. Tostle (200 acres) may be allowed in preference.

Concur in their view retaining vote cast by F.O. in 1866 and since renewed & reattached.

MCC 12/4

Wd. Sept. 19
at once

Sept 1905
Sept
Previous Paper:
2592
Copy comes to Comm. and 4260 2/2
Previous Paper
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C. O.
32274
Recd
FOREIGN OFFICE, SEP 05

526

September 7th, 1905.

Sir:-

I laid before the Marquess of Lansdowne your letter ^{com:} 17615/1905 of May 31st last enclosing copy of a despatch from the Commissioner of the East Africa Protectorate on the subject of the claim of the German East Africa Company to the ownership of some twenty five square miles in Witu and also of the claim of Mr. E. Tost to Two hundred acres of land situated within the tract in question.

After a careful consideration of the matter His Lordship is of opinion that it is desirable that these two claims should be kept distinct.

With regard to Mr. Tost's claim it is evident that he possesses no valid title to the land claimed by him and that he is at most a mere tenant at will of the German East Africa Company.

He appears however to have been in undisputed possession

The Under Secretary of State,
Colonial Office.

possession for the last fourteen years and would

therefore seem to have a good equitable claim.

For this reason and in view of the small extent of land involved Lord Lansdowne considers that Mr. Tost should be allowed to continue in possession or should even be given a grant of the land in order to regularize his position. This grant could be based on the long period for which he has been in occupation. An additional reason for proposing

this course is that it is not desirable that he should be given any real cause for complaint which could serve as a handle to the German Government in supporting the far larger claim of the German East Africa Company. In informing the German Government of this decision it would be expressly stated that this action in favour of Mr. Tost is taken purely ex gratia and is in no way to be taken as an admission of the justice of the larger claim.

The German East Africa Company on the other hand appear to have very little in favour of their

claim

597

claim beyond paper transfers and technicalities and the circumstances appear to His Lordship to be so intricate that there is ample justification for replying that the claim cannot be satisfactorily dealt with unless all the facts are submitted to an exhaustive investigation in a Court of Law.

The points to which Lord Lansdowne proposes specially to call the attention of the German Government are the following:-

It is said that a part of the land claimed was not within the jurisdiction of the Sultan of Witu at all and therefore not his to sell; that the German and Swahili texts of the original Agreement with Mr. Denhardt were materially different; that the Sultan's signature is wanting on one of them; that modifications were made by a later agreement; that the transfer by Mr. Denhardt was only approved by Fumo Bakari while Sultan Ahmed was still alive and that Fumo Bakari had no jurisdiction to do so; that possession of the land was never taken by Denhardt

or

or his successors and that according to Mohammedan law which applies to the land it would revert to the original owners if possession were not taken within a limited period.

Lord Lansdowne proposes to inform the German Government in conclusion that if the German East Africa Company will bring an action to recover possession of the land in the High Court at Mombasa, all these points can be examined and if the Company succeed in making out their claim the Court will no doubt order possession of the land to be granted to them.

I am,

Sir,

Your most obedient,

humble servant,

F. H. Colvins

The Under Secretary of State for Foreign
 Affairs presents his compliments to the
 Under Secretary of State for the Colonies
 and would be glad if an early answer
 could be returned to his letter of the 7th
 instant respecting the claims of the German
 East Africa Company and Herr Tost to
 certain land in Witte.

Foreign Office

September 13, 1905.

Mr. Contreas

~~Mr. Contreas~~

2 files

WFO 14/9

F.O
32244

L.A.P.

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DRAFT.

VP of P
F.O

and 34684

20 September 05

MINUTE.

Sir I am directed by
Mr. Sec. Lyttelton to
ack the receipt of your
letter of the 7th inst.
on the subject of
the claims of Guman
subjects to the ownership
of land in Witia in
the East Africa Protectorate.
-note of to inform
you that he concurs
in the action proposed
by the Marquis of
Lansdowne vizt
that the Guman Govt
shd be informed that,

- Mr. This 19/9
- Mr. Mr. Antrobus 178
- Mr. Antrobus.
- Mr. Coe
- Mr. Lucas.
- Mr. Graham.
- Sr. M. Osmannsey.
- The Duke of Marlborough.
- Mr. Lyttelton.

(Circulo to 17615. not day)

Copy to Comms and 1124 22 Sept 05

Copy ~~careless~~ Comms L.F.

REAL-2000-12-01
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